

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES BURTON,

Defendant-Appellant.

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UNPUBLISHED

January 16, 2001

No. 215183

Wayne Circuit Court

LC No. 97-001464

Before: Smolenski, P.J., and Holbrook, Jr. and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to natural life in prison for the murder conviction, to be served consecutively to a two-year sentence for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first contends that the prosecutor failed to present sufficient evidence to support a first-degree murder conviction. In reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). To convict a defendant of first-degree murder, the prosecutor must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. Premeditation and deliberation require sufficient time to allow the defendant to take a second look. The elements of premeditation and deliberation may be inferred from the circumstances surrounding the killing. *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). Premeditation may be established through evidence of (1) the parties' prior relationship, (2) the defendant's actions before the killing, (3) the circumstances of the killing itself, and (4) the defendant's conduct after the homicide. *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992).

We reject defendant's contention that the prosecutor failed to present sufficient evidence that defendant committed a premeditated and deliberate murder. Defendant and the victim had a prior relationship; defendant was the victim's boyfriend and the father of the victim's youngest daughter. Defendant's actions before the killing indicate that on the night before the murder

defendant was angry with the victim for going out with her cousins, that seven to nine days before the murder defendant slapped the victim during an argument, and that approximately two weeks before the murder defendant purposely drove his vehicle into another vehicle parked in the victim's driveway. Immediately before the shooting, defendant's and the victim's daughter witnessed defendant strike the victim with a broom. The record reflected the following circumstances surrounding the shooting: the victim received seven gunshot wounds, including a shot at close range (within twelve inches) between the eyes; the victim's bed surface and pillows had several bullet entrance holes, and the trajectory of the shots indicated that the shooter fired downward at the victim in her bed; the bedroom where the murder occurred exhibited no signs of a violent struggle; and two telephones in the home where the murder occurred were disconnected, and another was placed behind a couch. Furthermore, after the murder defendant never attempted to telephone the victim or his daughter, and never sought to reclaim a rental vehicle he lent the victim's mother on the morning of the murder.

We conclude that, viewing these facts and the reasonable inferences arising therefrom in the light most favorable to the prosecution, the evidence was sufficient to support a reasonable jury's conclusion that defendant premeditated and deliberated the victim's murder. *Kelly, supra* at 641-642; *Schollaert, supra* at 170-171.

Defendant next argues that the trial court abused its discretion by improperly admitting other acts evidence.<sup>1</sup> We note that defendant failed to properly preserve for our review his arguments regarding the admission of other acts evidence because neither defendant nor defense counsel specifically objected on these grounds. *People v Griffin*, 235 Mich App 27, 44; 597 NW2d 176 (1999). When the prosecutor moved to bring in the other acts testimony under MRE 404(b), defense counsel replied, "As far as I'm concerned, Judge, she can bring it in. . . ." Immediately after the trial court later announced its decision to admit other acts testimony, defense counsel objected but advanced no grounds for his objection.

Moreover, MRE 404(b)(1) expressly contemplates the admissibility of a defendant's other acts to prove motive. *People v Hoffman*, 225 Mich App 103, 105-106; 570 NW2d 146

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<sup>1</sup> The trial court granted the prosecutor's request to present under MRE 404(b) testimony that defendant, in an apparent fit of jealousy between one and two weeks before the murder, rammed a vehicle parked in the victim's driveway. The prosecutor argued that the testimony went toward proving defendant's motive, and that defense counsel placed the motive at issue in his opening statement by telling the jury that defendant had no reason to kill the victim and suggesting that her death possibly was drug-related. The prosecutor also presented testimony that seven to ten days before the victim's murder defendant slapped her during an argument and that defendant once put his fist through a door of the victim's mother's home. Defendant contends on appeal that (1) testimony that he slapped the victim during an argument and that he put his fist through a door exceeded the scope of the prosecutor's initial motion regarding the vehicle ramming incident; (2) because the vehicle ramming and fist through the door incidents were not directed towards the victim's person, they only tended to show defendant's propensity to commit bad acts; (3) testimony concerning the vehicle ramming incident was more prejudicial than probative because the testifying witness did not know the actual circumstances behind defendant's actions; and (4) the trial court failed to weigh or consider the "legal relevancy" of the evidence according to *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993), mod 445 Mich 1205 (1994).

(1997). A criminal defendant's motive for committing a crime need not be proved at trial, but always is relevant. *People v Fair*, 165 Mich App 294, 299; 418 NW2d 438 (1987). Furthermore, in this case defense counsel expressly disclaimed that defendant had any motive to kill the victim. The evidence of defendant's previous acts of anger directed at the victim, the vehicle ramming and slapping incidents,<sup>2</sup> tended to establish defendant's apparent motive to kill her, thus satisfying MRE 401's definition of relevance.<sup>3</sup> Without such evidence, the prosecutor would have no way to refute defense counsel's claim that defendant had no reason to kill the victim. Given the evidence's significant probative value and the apparent unavailability of other means of proving defendant's strained relationship with the victim, we do not find that any prejudicial effect of the evidence substantially outweighed its probative value. MRE 403. In conclusion, we find no clear abuse of discretion in the trial court's admission of the other acts evidence. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

Defendant lastly asserts that the trial court erred by instructing the jury regarding false exculpatory statements because the record did not substantiate the existence of such statements. Defendant claims that his police statement does not qualify as a false exculpatory statement because the vast majority of his police statement was not proven false.<sup>4</sup> To show that he was not at the scene of the murder, defendant told the police that the victim's next door neighbor gave defendant a ride that morning to his mother's house. Defendant clearly offered this statement to exculpate himself. Given the time frame between when the victim last was known to be alive and when defendant claimed to have left her house, had this statement been true it would have tended to prove that defendant did not kill the victim. The police investigated defendant's version of events by talking to the neighbor, who contradicted defendant's story. The neighbor denied at trial that he gave defendant a ride on the morning of the murder or at any other time. Thus, the prosecutor presented sufficient evidence to refute defendant's alibi statement to the police. *People v Dandron*, 70 Mich App 439, 442; 245 NW2d 782 (1976). Additionally, the testimony of defendant's brother contradicted defendant's statement to police concerning a telephone conversation defendant claimed to have had with his brother after defendant allegedly was told by an acquaintance that the victim was dead. Therefore, we conclude that the trial court

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<sup>2</sup> To the extent that defendant challenges the admission of testimony concerning defendant placing his fist through a door of the victim's mother's home, we note that the trial court sustained defendant's hearsay objection to, and granted defendant's motion to strike, the victim's mother's testimony regarding the identity of the individual responsible for the hole in her door. The court specifically instructed the jury, "There's a hole through her door, but she didn't see the defendant do it and she wasn't told, so all we have is a hole in the door."

<sup>3</sup> While defendant asserts that the trial court "failed to make the required determinations of "legal relevancy," our reading of the trial court's ruling convinces us that although the court did not specifically utilize the term "relevant" or cite MRE 401 or 402, the court clearly contemplated the requirement of legal relevance in explaining that the prosecutor could introduce other acts evidence that tended to prove defendant's motive.

<sup>4</sup> That many details within defendant's statement to the police were not contradicted does not necessarily confirm the statement's veracity, as defendant suggests. See *Williamson v United States*, 512 US 594, 599-600; 114 S Ct 2431; 129 L Ed 2d 476 (1994) ("One of the most effective ways to lie is to mix falsehood with truth.").

did not err by instructing the jury regarding false exculpatory statements, and that the jury instructions when read as a whole fairly presented the issues to be tried and sufficiently protected defendant's rights. *People v Whitney*, 228 Mich App 230, 252-253; 578 NW2d 329 (1998).

Affirmed.

/s/ Michael R. Smolenski  
/s/ Donald E. Holbrook, Jr.  
/s/ Hilda R. Gage